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OCTOBER TERM, 1986

WILLIAM WAYNE THOMPSON,
Petitioner,

vs.

THE STATE OF OKLAHOMA,
Respondent.

ON WRIT OF CERTIORARI
TO THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

**BRIEF FOR AMICUS CURIAE
AMNESTY INTERNATIONAL
IN SUPPORT OF PETITIONER**

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BRIEF OF AMNESTY INTERNATIONAL

INTEREST OF AMICUS CURIAE

This brief is submitted amicus curiae by Amnesty International ("AI"), with the consent of the parties.¹

Amnesty International is an independent international human rights organization which (1) seeks the release of "prisoners of conscience" -- men and women detained anywhere because of their beliefs, colour, sex, ethnic origin, language or religious creed, provided they have not used or advocated violence; (2) works for fair and prompt trials for all political prisoners and on behalf of such people detained without charge or trial; and (3) opposes the

¹ The parties' letters of consent to the filing of this brief are being filed with the Clerk of the Court pursuant to Rule 36.2 of the Rules of this Court.

death penalty and torture or other cruel inhuman or degrading treatment or punishment of all prisoners without reservation. AI acts on the basis of the Universal Declaration of Human Rights and other international instruments. Amnesty International opposes the death penalty unconditionally, believing it to be the ultimate cruel, inhuman and degrading punishment and a violation of the right to life, as proclaimed in the Universal Declaration and other international human rights instruments.

Amnesty International was founded in London in 1961 and now has sections in forty-four countries (in Africa, Asia, the Americas, Europe and the Middle East), including the United States, with individual members, subscribers and supporters in more than 120 other countries. There are 3,341 local

AI groups throughout the world working in support of all aspects of AI's mandate. Since Amnesty International was founded AI groups have intervened on behalf of more than 25,000 prisoners in over a hundred countries with widely differing ideologies. In 1977, AI received the Nobel Prize for its work.

Amnesty International has formal consultative status, or similar formal relations, with the United Nations, UNESCO, the Organization of American States, the Council of Europe and the Organization of African Unity.

In February 1987, AI initiated a worldwide campaign urging states within the United States which retain the death penalty to abolish it. The campaign is based upon a 240 page report which discusses all aspects of the death penalty as implemented in the United

States, including the execution of juvenile offenders. United States of America: The Death Penalty, at 65-75 (February 1987).

Amnesty International does not approve of and would not defend any violent crime. AI cannot regard the death penalty -- particularly as applied to crimes committed by juvenile offenders -- other than as cruel, inhuman and degrading treatment and incompatible with respect for the inherent dignity of the human person.²

With respect to the execution of

² Trop v. Dulles, 336 U.S. 86, 100 (1958) ("The basic concept underlying the Eighth Amendment is nothing less than the dignity of man.")

juvenile offenders,³ there exists a well developed, unequivocal international legal and moral consensus prohibiting all nations from executing children for their crimes. However heinous the crime, the imposition on a young person of a sentence of utmost cruelty, which denies the possibility of rehabilitation or reform, is contrary to contemporary standards of justice and humane treatment.

³ The term "juvenile," "child" or "juvenile offender" as used in this brief refers to a person who was under 18 at the time they committed their crime in accordance with the internationally recognized legal standards described in this brief.

SUMMARY OF ARGUMENT

In the past decade only a handful of juvenile offenders have been executed by governments in the world. Since 1979 out of the thousands of executions recorded by Amnesty International, only eight were reported to have been executions of juvenile offenders. These executions occurred only in Rwanda, Pakistan (two), Bangladesh, Barbados and the United States (three). There have also been unconfirmed reports of executions of juvenile offenders in Iran in recent years. These "unusual" events stand against a nearly universal consensus of the international community that the execution of juvenile offenders is not only offensive to contemporary international norms of moral decency but also violates internationally recognized legal standards.

Amnesty International, based on its knowledge of national practices regarding the execution of juvenile offenders and its participation since 1961 as an observer in the development of international legal standards in this area, believes that there is a well established internationally recognized legal standard prohibiting the execution of juvenile offenders. In this brief AI describes the international documents, including widely ratified multilateral treaties, and practices of nations which demonstrate the existence of this international prohibition.

The evidence of international consensus on this issue is overwhelming. Virtually every nation in the world, including the United States, has ratified treaties which prohibit the execution of juvenile offenders in some

circumstances (e.g., during wartime). The majority of nations have ratified treaties which prohibit the execution of juvenile offenders in all circumstances. Moreover, there have been numerous additional international expressions of the prohibition against the execution of juvenile offenders in the work of various international bodies. The United States has been a participant in these developments and, until recently at least, has never objected to the development of the internationally recognized legal standards prohibiting the execution of juvenile offenders.

This body of internationally recognized legal standards and opinion should be considered by this Court in determining whether the execution of appellant William Wayne Thompson for a crime committed when he was fifteen

years of age would violate the Eighth Amendment's prohibition against cruel and unusual punishment. The international community has achieved a consensus on this question which is relevant to this Court's Eighth Amendment analysis under Trop v. Dulles, 356 U.S. 86, 101 (1958), and its progeny. In fact, on the question of the execution of juvenile offenders the evidence of international consensus is more compelling than the evidence upon which the Court relied in Trop or in the death penalty cases which have applied the analysis in Trop. See, e.g., Gregg v. Georgia, 428 U.S. 153, 173 (1976) (Stewart, J., plurality opinion); Enmund v. Florida, 458 U.S. 782, 796 n. 22 (1982).

The fact that the execution of juvenile offenders conflicts with internationally recognized legal standards

should be given particular weight in this Court's constitutional analysis. Constitutional guarantees under the United States Constitution should not provide significantly less protection than the protection afforded by international norms on important issues of human rights and fundamental freedoms. Amnesty International urges this Court to recognize the significance of the position taken by the international community on this issue by preventing the execution of William Wayne Thompson under the Eighth Amendment of the United States Constitution.

ARGUMENT

I.

INTERNATIONALLY RECOGNIZED LEGAL STANDARDS AND NATIONAL PRACTICES SUPPLY COMPELLING EVIDENCE THAT THE EXECUTION OF JUVENILE OFFENDERS CONSTITUTES CONSTITUTIONALLY PROSCRIBED CRUEL AND UNUSUAL PUNISHMENT

- A. This Court has Looked to Internationally Recognized Legal Standards and the Practices of Other Nations to Determine the Meaning of "Cruel and Unusual Punishment" Under the Eighth Amendment

As this Court recognized in 1910, the Eighth Amendment prohibition against cruel and unusual punishment "is not fastened to the obsolete." Weems v. U.S., 217 U.S. 349, 378 (1910). A half-century later, this Court again emphasized that the Eighth Amendment "must derive its meaning from evolving standards of decency that mark the progress of a maturing society." Trop v. Dulles, 356 U.S. 86, 101 (1958).

As befits a nation mindful of its place within the international community, the plurality opinion in Trop did not rely solely upon American society as its benchmark for determining "evolving standards of decency" for this purpose. In Trop, the fact that the overwhelming majority of nations did not employ denaturalization as a punishment for desertion was a significant factor in this Court's decision. Trop, supra, 356 U.S. at 102-03.

International standards are now an established aspect of Eighth Amendment analysis,⁴ particularly regarding limits for the use of executions as a

⁴ See also, Lareau v. Manson, 507 F.Supp. 1177 (D.Conn. 1980), modified on different grounds, 651 F.2d 96 (2d Cir. 1981); Sterling v. Cupp, 20 Or. 611, 625 P.2d 123 (1981), for the application of this principle in a different context.

penalty. In Coker v. Georgia, 433 U.S. 584, 596 n. 10 (1977), for instance, this Court noted that as of 1965 only three major nations in the world retained the death penalty for rape. That international perspective informed the Coker decision that the imposition of the death penalty for the rape of an adult woman is "cruel and unusual" within the meaning of the Eighth Amendment. Id.

More recently, in Enmund v. Florida, 458 U.S. 782, 796 n.22 (1982), this Court again turned toward the "climate of international opinion" as one basis for the determination that imposition of a death sentence upon a defendant who had not intended to kill is cruel and unusual punishment. Id. In Enmund this Court looked particularly to the practices of countries in Europe and of

countries currently or formerly in the British Commonwealth. Id.

The force of international practice and opinion is even stronger against executions for crimes committed by juvenile offenders than it was for rapes (in Coker) or for unintended killings (in Enmund). In fact, the laws and practices of other nations as well as numerous international treaties, declarations and resolutions, indicate that evolving standards of decency of a maturing international community prohibit the execution of juvenile offenders.

When this Court recognized nearly 30 years ago in Trop that the United States Constitution -- and in particular the Eighth Amendment -- cannot be interpreted in isolation from international legal standards and practices, the movement

toward an international system for the protection of international human rights was in its early stages. The international perspective recognized in Trop v. Dulles has evolved through international action in later years into international human rights and legal standards recognized throughout the world.

International human rights law has now become an established, essential and universally accepted part of the life of the international community. L. Henkin, Introduction, in "The International Bill of Rights," at 1 (1981). Individuals, including people of the United States, are now understood to possess remediable rights based on international law. See, e.g., Filartiga v. Pena-Irala, 630 F.2d

876 (2d Cir. 1980)⁵ Moreover, the United States has played an important role in fostering these developments over the years.⁶ In particular, the United States participated, without protest, in the development over the past forty years of an international norm prohibiting the execution of juvenile offenders. See generally, Hartman, "Unusual" Punishment: The Domestic Effects of International Norms Restricting the Application of the Death

⁵ See generally, Henkin, International Law as Law in the United States, 82 Mich. L. Rev. 1555 (1984); Restatement (Revised) Foreign Relations Law of the United States, §§131(3) and (4).

⁶ In the past 15 years Congress has incorporated international human rights standards in dozens of laws. This legislation is collected in Human Rights Documents: Compilation of Documents Pertaining to Human Rights, Committee on Foreign Affairs (September 1983), at 24-58.

Penalty, 52 U. Cinn. L. Rev. 655, 682-686 (1983).

The massive evidence of laws and practice throughout the world prohibiting executions for crimes committed by juvenile offenders and the treaties condemning such executions are relevant to interpret the Eighth Amendment of the United States Constitution. The global outcry against executions for crimes committed by juvenile offenders has risen to the strength of an internationally recognized prohibition which should be respected by the United States and all other countries in the world.

B. Internationally Recognized Legal Standards and National Practices Condemn the Punishment of Death for Crimes of Juvenile Offenders

In this section Amnesty International presents the evidence that internationally recognized legal standards prohibit execution of juvenile offenders. Evidence of such standards, even emerging standards, is precisely the type of evidence entitled to persuasive weight under Trop, Coker and Enmund. This Court should give great weight in its Eighth Amendment analysis to the overwhelming consensus of international standards and practices on this issue.

1. National Laws and Practices

Over 80 nations, including almost all Western European countries, either have abolished the death penalty for all offenses, or have forbidden it for ordinary criminal offenses, or have excluded

it for certain offenders, including juvenile offenders.⁷ Significantly, these nations range widely in political, regional and cultural diversity.

Thirty countries have completely abolished the death penalty. Eighteen additional countries provide for the death penalty only for exceptional crimes, such as crimes under military law, or for crimes committed under exceptional circumstances. More than 40 of the countries which retain the death penalty for common crimes have statutory provisions recognizing juvenile offend-

⁷ A list of all retentionist and abolitionist nations is included in the Appendix at A-1 through A-7. Retentionist countries that have prohibitions against the execution of juvenile offenders in their national legislation are identified in the Appendix at A-3 through A-7.

ers as exempt from the death penalty.⁸

Even in the United States, laws in various jurisdictions which permit the use of the death penalty nonetheless recognize the uniqueness of juvenile offenders, with 27 of the 37 states with death penalty laws setting a minimum age for imposition of the death penal-

⁸ See Appendix. These statistics are taken from information in AI's files. See also, Hartman, *supra*, at 666 n. 44. A 1962 study showed that, of 117 retentionist countries, 77 countries required a minimum age of 18 for executions. Patrick, *The Status of Capital Punishment: A World Perspective*, 56 Journal of Criminal Law, Criminology and Police Science 397, 410 (1965).

ty.⁹ This practice is underscored by the declarations of various representative American legal bodies, including the American Law Institute and the American Bar Association, which have publicly opposed the execution of

⁹ Eleven states require that the minimum age be at least 18, including the recent additions of New Jersey and Maryland. These states are California, Colorado, Connecticut, Illinois, Nebraska, New Mexico, Ohio, Oregon, New Jersey, Maryland and Tennessee. Seven additional jurisdictions without a minimum age requirement expressly provide for age as one of the mitigating factors in imposing the death sentence. See also, *Eddings v. Oklahoma*, 455 U.S. 104, 115-16 (1982).

juvenile offenders.¹⁰

While some nations still retain the possibility of executing juvenile offenders in their laws, the actual practices of nations indicate that the execution of juvenile offenders is exceedingly rare. Although 81 nations

¹⁰ American Law Institute Model Penal Code §210.6(1)(d) (Proposed Official Draft, 1962); §210.6, Comment, 1331 Official Draft and Revised Comments (1980). The American Bar Association Report No. 117A, approved August 1983, stated:

Retribution or legal vengeance seems difficult enough for a government to justify where adult offenders are involved and vengeance against children for their misdeeds seems quite beyond justification. It has been persuasively argued that the Eighth Amendment precludes retribution for its own sake as improper. The spectacle of our society seeking legal vengeance through the execution of children should not be countenanced by the ABA.

reportedly performed executions between 1973 and 1982, only two juvenile offenders were reported to have been executed during that period.¹¹ Moreover, the Secretary General of the United Nations noted in 1973 that "[t]he great majority of Member States [of the United Nations] report never condemning to death persons under 18 years of age."¹²

Amnesty International has collected data showing that since 1979 there have been more than 11,000 judicially sanctioned executions in over 80 countries;

¹¹ Hartman, supra, note 6, at 666-67 n. 44. This data is based on the reports of more than 70 nations to the United Nations for the period in question. In addition, one non-reporting country is known to have carried out the execution of a juvenile offender in 1982.

¹² United Nations Economic and Social Council, Report of the Secretary General on Capital Punishment at 10, U.N. Doc. E/5242 (1973).

however, only eight persons who committed their offense while under the age of 18 were known to have been executed during that period. Five of these executions took place in Pakistan (two), Bangladesh, Rwanda and Barbados. The other three were Charles Rumbaugh (executed in Texas September 11, 1985, after dropping his final appeals), James Terry Roach (executed in South Carolina January 10, 1986) and Jay Pinkerton (executed in Texas May 15, 1986). There are also unconfirmed reports of executions of juvenile offenders in Iran. In the rest of the world, as in the United

States,¹³ being put to death for a crime committed as a juvenile is indeed "cruel and unusual in the same way that being struck by lightning is cruel and unusual." Furman v. Georgia, 408 U.S. 238, 309 (1972) (Stewart, J., concurring).

¹³ See Streib, Death Penalty for Children: The American Experience with Capital Punishment for Crimes Committed Under Age Eighteen, 36 Okla L. Rev. 613, 618-20 (1983); J. Laurence, the History of Capital Punishment 16-18 (1960); H. Bedau (ed.), The Death Penalty In America 52-56 (1964).

2. Major Human Rights Treaties Prohibit The Execution of Juvenile Offenders

The repugnance around the world towards executions for crimes committed by children has elevated this question beyond national reform into the arena of international concern and action. Numerous international treaties and other resolutions, declarations and other international documents reflect the international consensus against execution of juvenile offenders. See N. Rodley, The Treatment of Prisoners Under International Law at 186 (1987). At least three major human rights treaties explicitly prohibit the imposition of the death penalty on juvenile offend-

ers.¹⁴

¹⁴American Convention on Human Rights, O.A.S. Official Records, OEA/Ser. K/XVI 1.1, Doc. 65 Rev. 1 Con. 1 (1970) at Art. 4(5); International Covenant on Civil and Political Rights, Art. 6(5), Annex to G.A. Res. 2200, 21 U.N. GAOR Res. Supp. (No. 16), at 53, U.N. Doc. A/6316 (1966); Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, Art. 68, 6 U.S.T. 3516, T.I.A.S. No. 3365 §75 U.N.T.S. 287.

Protocol No. 6 to the European Convention on Human Rights, ratified by seven nations and signed by all but five of the twenty-one Member States of the Council of Europe, abolishes the death penalty entirely for crimes during peacetime. Opened for signature April 23, 1983, 1983 Europ. T.S. No. 114, reprinted in 22 I.L.M. 539 (1983).

In addition, the drafting of a Convention on the Rights of the Child is currently underway. A Working Group of the U.N. Commission on Human Rights is preparing the Draft Convention. At the Working Group session in January 1986, the drafters adopted by consensus a provision which would forbid the execution, as well as a life sentence without parole, for children who commit offenses before the age of 18. The United States representative stated that the United States might make a reservation on these limitations but did not prevent the adoption of the provision by consensus. U.N. Doc E/1986/39, Para. 106.

a. International Covenant on
Civil and Political
Rights

Article 6(5) of the International Covenant on Civil and Political Rights, declares:

Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall be not carried out on pregnant women.

Eighty-six nations of the world,¹⁵ including most of the Western European countries and Canada, have ratified this Covenant. Another seven nations, including the United States, have signed it.¹⁶

¹⁵ This list includes the Byelorussian Soviet Socialist Republic and the Ukrainian Soviet Socialist Republic.

¹⁶ The nations which have ratified or signed the Covenant are identified in the Appendix.

The debates surrounding the adoption of Article 6 of the International Covenant on Civil and Political Rights demonstrate that no opposition arose against the view that permitting executions of juvenile offenders was contrary to human rights principles.¹⁷ The travaux preparatoires reveal that the drafters of Article 6 believed that the prohibition against the execution of juvenile offenders represented a consensus of nations and never questioned the validity of this consensus.¹⁸

In fact, the travaux make clear that the Article 6(5) prohibition was no more than the codification of an

¹⁷ Hartman, supra, at 671-72.

¹⁸ Id. at 672 and n. 64, and citations noted therein.

already existing binding norm.¹⁹ The U.N. General Assembly resolution which recognized that Article 6 of the International Covenant constitutes a "minimum standard" for all Member States, not only ratifying states,²⁰ is further evidence of State practice supporting the position that the prohibition against the execution of juvenile offenders is an internationally recognized legal standard.

b. American Convention on Human Rights

Article 4(5) of the American Conven-

¹⁹ Id.

²⁰ Id. at 681 n. 94; G.A. Res. 35/172, U.N. GAOR Supp. (No. 48) at 195, U.N. Doc. A/35/48 (1980). Although the United States did not participate in the Article 6 debates, it did support this General Assembly resolution. Id. at 685, 684 n. 106, 681 n. 94.

tion on Human Rights²¹ also prohibits the execution contemplated by Oklahoma in this case:

Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to

²¹ This treaty has been ratified by nineteen American States and signed by an additional three countries, including the United States. A list of nations which have ratified or signed the American Convention is included in the Appendix.

pregnant women.²²

The drafters of the American Convention, recognizing that total abolition of the death penalty was not possible in the context of the Convention, imposed

²² On March 27, 1987, the Inter-American Commission on Human Rights of the Organization of American States held that the United States violated Article 1 (right to life) and Article 2 (prohibition of discrimination) of the American Declaration on the Rights and Duties of Man by permitting the execution of juvenile offenders. OAS IACHR Res. 3/87, Case No. 9647, (Roach and Pinkerton v. United States), OEA Ser. L/V/II 69, Doc. 17 (March 27, 1987). The Commission stated in dictum that there was a peremptory norm of international customary law prohibiting the execution of juvenile offenders. *Id.* at Para. 56. Although the Commission did not find that age 18 was the universally accepted dividing line between juvenile and adult offenders for this purpose, it did state that there was an "emerging" norm setting the age of 18 as the minimum age for the imposition of the death penalty. *Id.* at Para. 60. This decision did not address Article 4(5) of the American Convention because the United States has not yet ratified the Convention.

important limitations on the use of executions, including the prohibition of the execution of juvenile offenders.²³ Moreover, the draft proposal of Article 4(5) was patterned after the International Covenant's prohibition on the executions of juvenile offenders, thus demonstrating a belief that such a prohibition constituted the prevailing international standard.²⁴

²³ Although the motion for total abolition of the death penalty did not carry, no vote was cast against it. T. Buergenthal & R. Norris, Human Rights: The Inter-American System (1982), at 248, Booklet 12. The Rapporteur noted that the drafters acted according to the "trend in the Americas toward eliminating [capital] punishment". Report of the Rapporteur of Committee I. *Id.* at 162. A number of delegations also expressed hostility toward any use of the death penalty. See Minutes, 3d Session of Committee I, *id.* at 36-38.

²⁴ See, Hartman, *supra*, at 672-73 n. 66, and the sources cited therein.

The travaux of the American Convention indicate that the United States' delegation did not oppose per se the notion that the execution of juvenile offenders should be prohibited. Rather the United States delegation appeared more concerned that setting specific age limits on the exercise of the death penalty did not adequately take into account the "already apparent" trend toward gradual abolition of the death penalty. The U.S. stated:

The proscription of capital punishment within arbitrary age limits presents various difficulties in law, and fails to take account of the general trend, already apparent, for the gradual abolition of the death penalty... For this reason we believe the text will be stronger and more effective if this paragraph is deleted. [Emphasis added.]

Observations and Proposed Amendments to the Draft of the Inter-American

Convention on the Protection of Human Rights, T. Buergenthal and R. Norris, supra, Booklet 13, at 152.

c. Fourth Geneva Convention

The almost universally ratified Fourth Geneva Convention of 1949, concerned with the protection of civilians in time of war, also prohibits the execution of juvenile offenders in the context of war -- perhaps the most threatening period in any nation's existence. Article 68 of the Fourth Geneva Convention provides:

In any case, the death penalty may not be pronounced on a protected person who was under eighteen years of age at the

time of the offense.²⁵

The ratifying countries of the Geneva Convention -- 165 nations, including the United States -- virtually cover the

²⁵ The two additional Protocols to the Geneva Conventions of 1949, adopted in 1977, both rule out the death penalty for crimes committed by juvenile offenders. Geneva Protocol I Additional to the Geneva Conventions of August 12, 1949, and relating to the Protection of Victims of International Armed Conflicts, Article 76; Geneva Protocol II Additional to Geneva Conventions of August 12, 1949, and relating to the Protection of the Victims of Non-International Armed Conflicts, Article 6. The United States has signed both additional Protocols. In January, 1987, President Reagan announced that the United States would not ratify additional Protocol I; however, this action was taken for reasons other than the provisions of Article 76. Message From the President of the United States Transmitting the Protocol II Additional to the Geneva Conventions of August 12, 1949, and relating to the Protection of Victims of Noninternational Armed Conflicts concluded at Geneva on June 10, 1977, 100th Cong., 1st Sess., Treaty Doc. 100-2 (1987).

globe.²⁶ If nearly all the nations of the world, including the United States, have agreed to prohibit the execution of juvenile offenders during periods of international armed conflict, this internationally recognized standard ought to apply with even greater force during peacetime.

d. These Treaties Reflect an International Consensus Against The Execution of Juvenile Offenders

The American Convention, the International Covenant on Civil and Political Rights, and the Fourth Geneva Convention, along with their travaux preparatoires provide strong evidence

²⁶ The only nations which have not ratified the Geneva Conventions are Bhutan, Brunei, Burma, Maldives and Nauru. Kiribati has also not ratified the Conventions but they remain applicable to it by virtue of a provisional declaration of application of the treaties.

that there exists a high degree of consensus among a large number of nations that the execution of juvenile offenders is forbidden.

Under both the International Covenant on Civil and Political Rights (Article 4(2)), and the American Convention on Human Rights (Article 27(2)), the prohibitions against the execution of juvenile offenders admit of no derogation even during national emergen-

cies.²⁷ The United States Government has ratified the Geneva Conventions and has signed but not yet ratified the two

²⁷ Likewise, under Article 3 of Protocol No. 6 to the European Convention on Human Rights, no derogation from the Protocol is allowed nor may reservations in respect of the Protocol be made under its Article 4. Recently, the European Parliament passed a resolution (Doc. B 2-220/85) calling upon all Council of Europe and European Community Member States who had not yet adhered to the Protocol to do so as soon as possible. The resolution welcomed "the continuing trend towards abolition of the death penalty in Member States of the European Community" and noted that "the death penalty is a form of cruel, inhuman and degrading punishment and a violation of the right to life, even when scrupulous legal procedures are followed". Report on the abolition of the death penalty and accession to the Sixth Protocol of the Convention for the Protection of Human Rights and Fundamental Freedoms, 1985-86 Eur.Doc. A2-167/85 at 10 (1985).

other conventions.²⁸ These treaty prohibitions provide important and authoritative evidence of the norm against the execution of juvenile offenders.

28 President Carter sent the International Covenant and American Convention, and two other treaties, to the Senate for its advice and consent on February 23, 1978. Human Rights Treaties, President's Message to the Senate, 14 Weekly Comp. Pres. Doc. 395 (Feb. 27, 1978). Although the President proposed reservations to the American Convention and the International Covenant upon their transmittal to the Senate, the Administration noted that the reservations were intended simply to avoid criticisms and implementation difficulties and "certainly not the preservation of any right to execute children or pregnant women, something never done in the United States." Response by the Department of State to the "Critique of Reservations to the International Human Rights Covenants" by the Lawyers Committee for International Human Rights, International Human Rights Treaties: Hearings before the Committee on Foreign Relations, 96th Cong., 1st Sess. 1, 55 (1979), noted in Hartman, supra, at 685 and n. 112.

3. Repeated Actions by the United Nations Condemn The Execution of Juvenile Offenders

The actions of the United Nations provide further evidence of the norm prohibiting the execution of juvenile offenders. The U.N. Economic and Social Council (ECOSOC) has adopted, pursuant to a resolution, safeguards relating to the death penalty, one of which was a prohibition against the execution of persons who committed crimes below the age of 18 years. E.C.S. Res. 1984/50, U.N. ESCOR Supp. (No. 1) at 33, U.N. Doc. E/1984/84 (1984). The U.N. General Assembly has endorsed these safeguards and asked the Secretary-General "to employ his best endeavours in cases where the safeguards . . . are violated." G.A. Resolution 39/118, U.N. Doc. A/39/51, at 211, Oper. paragraphs 2 and 5 (1984).

In September 1985, the Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders adopted Resolution No. 15, endorsing the ECOSOC safeguards and urging all states retaining the death penalty to implement them. The U.S. joined in the consensus on this resolution. Report of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (26 August to 6 September 1985) U.N. Doc. A/Conf.121/22 (1985), at 86-87.

Similarly, the new U.N. Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), also adopted by the Seventh Congress and the United Nations General Assembly without dissent by the United States, provide: "Capital punishment shall not be imposed for any crime committed by

juveniles." G.A. Res 40/33, Nov. 29, 1985, Annex, rule 17.2.

CONCLUSION

"Children have a very special place in life which law should reflect." May v. Anderson, 345 U.S. 528, 536 (1953) (Frankfurter, J., concurring), repeated in Eddings v. Oklahoma, 455 U.S. 104, 116 n. 12 (1982). As this Court emphasized in Eddings, "... youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage. Our history is replete with laws and judicial recognition that minors, especially in their early years, generally are less mature and responsible than adults. Particularly 'during the formative years of childhood and adolescence, minors often lack the experience, perspective and

judgment' expected of adults. Even the normal 16 year old customarily lacks the maturity of an adult." Id. at 116, citing Bellotti v. Baird, 443 U.S. 622 (1979).

Violent crime is a serious problem in nearly every nation. The universal truth of Justice Frankfurter's observation in May v. Anderson, however, is equally transcendent over national boundaries. With a handful of notorious exceptions, the laws, practices, and treaties of the nations of the world reflect this truth by prohibiting the penalty of death for crimes committed by children.

These internationally recognized legal standards prohibiting the execution of juvenile offenders were developed in recognition of the fact that the death penalty - with its uniquely cruel

and irreversible character - is a particularly inappropriate penalty for individuals who have not attained full physical or emotional maturity at the time of their actions. Children and adolescents are widely recognized as being less responsible for their actions than adults, and more susceptible to rehabilitation, thus rendering the death penalty a particularly inhumane punishment in their cases. Criminologists have also noted that arguments used to support the death penalty are especially inapplicable in the case of young people. It is recognized that children and adolescents are more liable than adults to act on impulse, or under the influence or domination of others, with little thought for the long-term consequences of their actions, and they are unlikely to be deterred by the death

penalty. Many young people who commit brutal crimes themselves come from brutalized and deprived backgrounds. To impose the death penalty in such cases, whether as retribution or as an intended deterrent, violates basic principles of humanity.

The Eighth Amendment of the Constitution of the United States has been considered to offer a strong guarantee of basic human rights of the people of the United States in part because it cannot be interpreted in isolation from the human rights norms of the international community. The Eighth Amendment, like the laws, practices, and treaties of the rest of the world, should be understood as prohibiting the killing of anyone as punishment for crimes committed as a child and thus should be found to prohibit the execution of William

Wayne Thompson. By so holding, this Court will reaffirm the essential role of the United States Constitution as the governing document of a nation committed to respect for human rights. The ruling in this case will matter not simply to William Wayne Thompson, or to the other juvenile offenders already sentenced to die in the United States, or even just to the people of the United

States. In truth, the attention of the world at large will be drawn to this decision.

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APPENDIX

APPENDIX

ABOLITIONIST AND RETENTIONIST COUNTRIES (AS OF APRIL 1987)

ABOLITIONIST BY LAW FOR ALL CRIMES
(Countries whose laws do not provide for the death penalty for any crime)

	<u>ICCPR*</u>	<u>AMER CONV</u>
Australia	x	
Austria	x	
Bolivia	x	x
Cape Verde		
Colombia	x	x
Costa Rica	x	x
Denmark	x	
Dominican Republic	x	x
Ecuador	x	x
Finland	x	
Federal Republic of Germany	x	
France	x	
Haiti		x

*Countries which have ratified or acceded to the International Covenant on Civil and Political Rights or the American Convention on Human Rights are noted by an "x" and countries which have signed, but not ratified, these treaties are noted by an "s."

	<u>ICCPR</u>	<u>AMER CONV</u>
Holy See		
Honduras	s	x
Iceland	x	
Kiribati		
Luxembourg	x	
Netherlands	x	
Nicaragua	x	x
Norway	x	
Panama	x	x
Philippines	x	
Portugal	x	
Solomon Islands		
Sweden	x	
Tuvalu		
Uruguay	x	x
Vanuatu		
Venezuela	x	x
Total: 30 countries		

ABOLITIONIST BY LAW FOR ORDINARY
CRIMES ONLY.

(Countries whose laws provide for the death penalty only for exceptional crimes such as crimes under military law or crimes committed in exceptional circumstances such as wartime)

Argentina	x	x
Brazil		
Canada	x	
Cyprus	x	
El Salvador	x	x
Fiji		
Israel	s	
Italy	x	

A-2

	<u>ICCPR</u>	<u>AMER CONV</u>
Malta		
Mexico	x	x
Monaco		
New Zealand	x	
Papua New Guinea		
Peru	x	x
San Marino	x	
Spain	x	
Switzerland		
United Kingdom	x	
Total: 18 countries		

RETENTIONIST

(Countries and territories whose laws provide for the death penalty for ordinary crimes. However, some of these countries have not in practice carried out executions in recent years.)

	<u>ICCPR</u>	<u>AMER CONV</u>	<u>JUV** PROHB</u>
Afghanistan	x		x
Albania			x
Algeria	s		x
Angola			x
Anguilla			x

** This column indicates countries which have prohibitions against the execution of juvenile offenders in their national legislation based on a July 3, 1986, AI survey. This survey is not necessarily complete and other countries may also have such legislation.

A-3

	<u>ICCPR</u>	<u>AMER CONV</u>	<u>JUV PROHB</u>
Antigua and Barbuda			x
Bahamas			x
Bahrain			
Bangladesh			
Barbados	x	x	
Belgium	x		
Belize			
Benin			
Bermuda			
Bhutan			
Botswana			x
British Virgin Islands			x
Brunei Darussalam			x
Bulgaria	x		x
Burkina Faso			
Burma			
Burundi			
Cameroon	x		
Cayman Islands			
Central African Republic	x		
Chad			
Chile	x	s	
China (People's Republic)			
Comoros			
Congo	x		
Cuba			
Czechoslovakia	x		x
Djibouti			
Dominica			x
Egypt	x		x
Equatorial Guinea			
Ethiopia			
Gabon	x		

A-4

	<u>ICCPR</u>	<u>AMER CONV</u>	<u>JUV PROHB</u>
Gambia	x		
German Democratic Republic			
Ghana			x
Greece			
Grenada		x	x
Guatemala		x	
Guinea	x		
Guinea-Bissau			
Guyana	x		
Hong Kong			
Hungary	x		x
India	x		
Indonesia			
Iran	x		
Iraq	x		
Ireland	s		
Ivory Coast			
Jamaica	x	x	x
Japan	x		x
Jordan	x		x
Kampuchea	s		
Kenya	x		
Korea (Dem. People's Rep.)			
[No. Korea]	x		
Korea (Rep.)			
[So. Korea]			
Kuwait			x
Laos			
Lebanon	x		
Lesotho			x
Liberia	s		
Libya	x		x
Liechtenstein			
Madagascar	x		
Malawi			
Malaysia			
Maldives			

A-5

	<u>ICCPR</u>	<u>AMER CONV</u>	<u>JUV PROHB</u>
Mali	x		
Mauritania			
Mauritius	x		
Mongolia	x		
Montserrat			x
Morocco	x		
Mozambique			
Namibia			
Nepal			
Niger	x		
Nigeria			
Oman			
Pakistan			
Paraguay		s	x
Poland	x		x
Qatar			
Romania	x		x
Rwanda	x		
Saint Christopher and Nevis			x
Saint Lucia			x
Saint Vincent and the Grenadines	x		x
Samoa			
Sao Tome and Principe			
Saudi Arabia			
Senegal	x		
Seychelles			
Sierra Leone			
Singapore			
Somalia			
South Africa			
Sri Lanka	x		
Sudan	x		
Suriname	x		
Swaziland			
Syria	x		

	<u>ICCPR</u>	<u>AMER CONV</u>	<u>JUV PROHB</u>
Taiwan (Republic of China)			
Tanzania	x		
Thailand			x
Togo	x		
Tonga			
Trinidad and Tobago	x		
Tunisia	x		x
Turkey			x
Turks and Caicos Islands			x
Uganda			
Union of Soviet Socialist Republics	x		x
United Arab Emirates			
Viet Nam	x		x
Yemen (Arab Republic) [North Yemen]			
Yemen (People's Democratic Republic) [South Yemen]	x		
Yugoslavia	x		
Zaire	x		
Zambia	x		
Zimbabwe			
Total: 127 countries and territor- ies			

COUNTRIES WHICH HAVE ABOLISHED THE
DEATH PENALTY SINCE 1975

(In recent years, at least one country a year has abolished the death penalty in law or, having done so for ordinary offences, has gone on to abolish it for all offences.)

1975: Mexico abolished the death penalty for ordinary offences.

1976: Canada abolished the death penalty for ordinary offences.

1977: Portugal abolished the death penalty for all offences.

1978: Spain abolished the death penalty for ordinary offences.

Denmark abolished the death penalty for all offences.

1979: Luxembourg, Nicaragua and Norway abolished the death penalty for all offences.

Brazil¹ and Fiji abolished the death penalty for ordinary offences.

¹ Brazil had abolished the death penalty in 1882 but reintroduced it in 1969 while under military rule.

1980: Peru abolished the death penalty for ordinary offences.

1981: France abolished the death penalty for all offences.

1982: The Netherlands abolished the death penalty for all offences.

1983: Cyprus and El Salvador abolished the death penalty for ordinary offences.

1984: Argentina² and Australia abolished the death penalty for ordinary offences.

1985: Australia abolished the death penalty for all offences.

1987: Haiti and the Philippines abolished the death penalty for all offences.

Moves to reintroduce the death penalty have been defeated in a number of countries in recent years.

² Argentina had abolished the death penalty for all offences in 1921 and again in 1972 but reintroduced it in 1976 following a military coup.